

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

v.

CANYON WILLOW OWNERS
ASSOCIATION, et al.,

Defendants.

Case No. 2:16-cv-00203-JCM-CWH

ORDER

Presently before the court is plaintiff Federal National Mortgage Association's response to this court's December 28, 2016, order to show cause why defendant Canyon Willow Owners Association's motion to dismiss the complaint should not be granted. (ECF No. 25).

Excusable neglect is an "elastic concept" that is determined by considering, *inter alia*: "the danger of prejudice to the [party not under scrutiny], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997) (quoting *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 391–93, 95 (1993) (discussing "excusable neglect" in the context of Federal Rule of Civil Procedure 6(b)).

Although plaintiff's counsel admits the omission in failing to timely respond to the motion to dismiss, this court, upon review of plaintiff's response to the previous order and defendant's lack of relevant filings, finds that: (1) defendant suffered little prejudice; (2) the plaintiff did not act in bad faith; (3) the delay, in light of discussions between the parties and the case's progression,

1 is not substantial; and (4) plaintiff has signaled an intent to simply refile its complaint if the present
2 one is dismissed without prejudice. (ECF No. 25); *see also Briones*, 116 F.3d at 381.

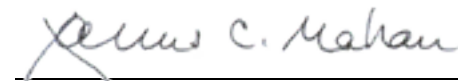
3 Therefore, plaintiff has exhibited excusable neglect in its failure to file a response to the
4 motion to dismiss. Thus, plaintiff will be allowed to file a response to defendant's motion to
5 dismiss (ECF No. 13).

6 Accordingly,

7 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff shall file a
8 response to defendant's motion to dismiss (ECF No. 13) within fourteen (14) days of the date of
9 this order.

10 IT IS FURTHER ORDERED that defendant will have seven (7) days from the date plaintiff
11 files its response to submit its reply.

12 DATED THIS 17th day of January, 2017.

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14 JAMES C. MAHAN
15 UNITED STATES DISTRICT JUDGE
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